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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,711	03/19/2001	Karol Renau	RENAU-54531	9716

24201 7590 02/26/2003

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EXAMINER

CAMPBELL, THOR S

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/812,711

Applicant(s)

RENAU, KAROL

Examiner

Thor S. Campbell

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 25-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Election/Restrictions

Applicant's election without traverse of Group I in Paper No. 7 is acknowledged, however, the restriction requirement is withdrawn since examining all the claims does not put an undue burden on the examiner. Claims 1-23, and 25-59 are treated on the merits. It is noted that claim 24 has been skipped in the original numbering of claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8, 9, 12-18, 23, 25-32, 34, 38, 39, 42-45, 47, 48, and 54-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Wade (US 941215).

Wade discloses a fluid heater comprising a heat exchanger for exchanging heat from an electric heating element to a fluid passing through the heat exchanger in a spirally shaped channel formed in a heat storage body, a cover plate for sealing the channel, a fluid inlet and fluid outlet from which heated fluid is discharged/dispensed. It is noted that although Wade is silent on the function of the heat exchanger after the heating element is turned off, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the heat exchanger of Wade has the ability to so perform.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 7, 33, 46 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wade.

Wade discloses a fluid heater comprising a heat exchanger for exchanging heat from an electric heating element to a fluid passing through the heat exchanger in a spirally shaped channel formed in a heat storage body, a cover plate for sealing the channel, a fluid inlet and fluid outlet from which heated fluid is discharged/dispensed. It is noted that although Wade is silent on the function of the heat exchanger after the heating element is turned off, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the heat exchanger of Wade has the ability to so perform. Wade does not explicitly disclose the heat exchanger being made from aluminum. It is generally well known and common knowledge in the art to use aluminum as a heat exchange body since it is known to have excellent heat conduction. It would have been obvious to one of ordinary skill in the art to use aluminum to make the heat exchanger of Wade since it was known in the art to use aluminum for heat exchangers.

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Claims 5, 6, 7, 10, 11, 19, 20, 21, 22, 35, 36, 37, 40, 41, 49, 50, 51, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wade in view of common knowledge in the art.

Wade discloses a fluid heater comprising a heat exchanger for exchanging heat from an electric heating element to a fluid passing through the heat exchanger in a spirally shaped channel formed in a heat storage body, a cover plate for sealing the channel, a fluid inlet and fluid outlet from which heated fluid is discharged/dispensed. It is noted that although Wade is silent on the function of the heat exchanger after the heating element is turned off, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the heat exchanger of Wade has the ability to so perform. Wade does not disclose specifically the use of the elements as claimed in claims 5, 6, 7, 10, 11, 19, 20, 21, 22, 35, 36, 37, 40, 41, 49, 50, 51, 52 such as, inlet and outlet valves, flow meters and spray heads, temperature sensors for sensing the temperature of the heat exchangers and microprocessor control means for controlling the system. Official Notice is taken that it is generally well known in the art of heating and in particular the art of heating water for a beverage dispensers to use inlet and outlet valves to control the flow of liquid through the heat exchanger, temperature sensing means to sense the temperature of the heat exchanger, flow meters and microprocessor control circuits to control the heating and dispensing of the fluid, and spray heads for dispensing the fluid. It would have been obvious to include such alterations in the wade device since it was well known in the art of beverage dispensing.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references show the state of the art of electric fluid heaters: Hoffman (US 488465), Baum (US 3710985), Roller (US 4343988), Rocchitelli (US 4508957).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thor S. Campbell whose telephone number is 703-306-9042. The examiner can normally be reached on Tue-Fri 5:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on 703-308-1327. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

TSC
February 24, 2003



**THOR CAMPBELL
PATENT EXAMINER**